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FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SHARON KUNKEL,
Plaintiff,

v.

MEMC ELECTRONIC MATERIALS,
INC. a corporation, DOE ONE through
DOE TWO HUNDRED, inclusive,
Defendant.

CASE NO. C 05-03510 JF

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulated to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. This parties further acknowledge, as set forth in Section 10, below, that

1 this Stipulated Protective Order creates no entitlement to file confidential information under seal;
 2 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
 3 that will be applied when a party seeks permission from the Court to file material under seal.

4 2. DEFINITIONS

5 2.1 Party: any party to this action, including all of its officers, directors,
 6 employees, consultants, retained experts, and outside counsel (and their support staff).

7 2.2 Disclosure or Discovery Material: all items or information, regardless of
 8 the medium or manner generated, stored, or maintained (including, among other things,
 9 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
 10 responses to discovery in this matter.

11 2.3 "Confidential" Information or Items: information (regardless of how
 12 generated, stored or maintained) or tangible things that qualify for protection under standards
 13 developed under F.R.Civ.P. 26(c).

14 2.4 [Deleted]

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
 16 from a Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or
 18 Discovery Material in this action.

19 2.7 Designating Party: a Party or non-party that designates information or
 20 items that it produces in disclosures or in response to discovery as "Confidential."

21 2.8 Protected Material: any Disclosure or Discovery Material that is
 22 designated as "Confidential."

23 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
 24 retained to represent or advise a Party in this action.

25 2.10 House Counsel: attorneys who are employees of a Party.

26 2.11 Counsel (without qualifier): Outside counsel and House Counsel (as well
 27 as their support staffs).

28 2.12 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
 2 witness or as a consultant in this action and who is not a past or current employee of a Party or of
 3 a competitor of a Party's and who, at the time of retention, is not anticipated to become an
 4 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
 5 trial consultant retained in connection with this litigation.

6 2.13 Professional Vendors: persons or entities that provide litigation support
 7 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
 8 organizing, storing, retrieving data in any form or medium, etc.) and their employees and
 9 subcontractors.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material
 12 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
 13 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 14 parties or counsel to or in court or in other settings that might reveal Protected Material.

15 4. DURATION

16 Even after the termination of this litigation, the confidentiality obligations imposed by this
 17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 18 otherwise directs.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or non-party that designates information or items for protection under this Order must
 22 take care to limit any such designation to specific material that qualifies under the appropriate
 23 standards. A Designating Party must take care to designate for protection only those parts of
 24 material, documents, items, or oral or written communications that qualify — so that other
 25 portions of the material, documents, items, or communications for which protection is not
 26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 28 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to

unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on the other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL") at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portions(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial

proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection with the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or items is stored the legend "CONFIDENTIAL." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not

1 waive its right to challenge a confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party's confidentiality designation must do so in good faith and must begin the
5 process by conferring directly (in voice to voice dialogue; other forms of communication are not
6 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
7 explain the basis for its belief that the confidentiality designation was not proper and must give
8 the Designating Party an opportunity to review the designated material, to reconsider the
9 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
10 designation. A challenging Party may proceed to the next stage of the challenge process only if it
11 has engaged in this meet and confer process first.

12 6.3 Judicial Intervention. A Party that elects to press a challenge to a
13 confidentiality designation after considering the justification offered by the Designating Party
14 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local
15 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis
16 for the challenge. Each such motion must be accompanied by a competent declaration that
17 affirms that the movant has complied with the meet and confer requirements imposed in the
18 preceding paragraph and that sets forth with specificity the justification for the confidentiality
19 designation that was given the Designating Party in the meet and confer dialogue.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Until the Court rules on the challenge, all parties shall continue to afford the material in
22 question the level of protection to which it is entitled under the Producing Party's designation.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a non-party in connection with this case only for
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
27 disclosed only to the categories of persons and under the conditions described in this Order.

28 When the litigation has been terminated, a Receiving Party must comply with the provisions of

1 section 11, below, (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a location and
3 in a secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
5 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
6 disclose any information or items designated CONFIDENTIAL only to:

7 (a) the Receiving Party's Outside Counsel of record in this action, as
8 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
9 for this litigation;

10 (b) the officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

12 (c) experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this litigation;

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation;

17 (f) during their depositions, witnesses in the action to whom disclosure
18 is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
19 reveal Protected Material must be separately bound by the court reporter and may not be
20 disclosed to anyone except as permitted under this Stipulated Protective Order.

21 (g) the author of the document or the original source of the
22 information.

23 7.3 [Deleted]

24 7.4 [Deleted]

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

27 If a Receiving Party is served with a subpoena or an order issued in other litigation that
28 would compel disclosure of any information or items designated in this action as

1 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax,
2 if possible) immediately and in no event more than three court days after receiving the subpoena
3 or order. Such notification must include a copy of the subpoena or court order.

4 The Receiving Party also must immediately inform in writing the Party who caused the
5 subpoena or order to issue in the other litigation that some or all the material covered by the
6 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
7 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
8 caused the subpoena or order to issue.

9 The purpose of imposing these duties is to alert the interested parties to the existence of
10 this Protective Order and to afford the Designating Party in this case an opportunity to try to
11 protect its confidentiality interests in the court from which the subpoena or order issued. The
12 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
13 confidential material — and nothing in these provisions should be construed as authorizing or
14 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
17 Material to any person or in any circumstance not authorized under this Stipulated Protective
18 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
19 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
20 and (c) inform the person or persons to whom unauthorized disclosures were made of all the
21 terms of this order.

22 10. FILING PROTECTED MATERIAL

23 Without written permission from the Designating Party or a court order secured after
24 appropriate notice to all interested persons, a Party may not file in the public record in this action
25 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
26 with Civil Local Rule 79-5.

27 11. FINAL DISPOSITION

28 Unless otherwise ordered and agreed in writing by the Producing Party, within sixty days

1 after the final termination of this action, each Receiving Party must return all Protected Material
 2 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
 3 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
 4 Protected Material. With permission in writing from the Designating Party, the Receiving Party
 5 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
 6 Material is returned or destroyed, the Receiving Party must submit a written certification to the
 7 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day
 8 deadline that identifies (by category, where appropriate) all the Protected Material that was
 9 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 10 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
 11 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 12 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
 13 work product, even if such materials contain Protected Material. Any such archival copies that
 14 contain or constitute Protected Material remain subject to this Protective Order as set forth in
 15 Section 4 (DURATION), above.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 18 person to seek its modification by the Court in the future.

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12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or items on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: ~~April 11~~ 17, 2006

LAW OFFICE OF RANDALL M. WIDMANN

By

RANDALL M. WIDMANN
Attorney for Plaintiff
SHARON KUNKEL

Dated: April 23, 2006
July

DLA PIPER RUDNICK GRAY CARY US LLP

By

JOHN R. SHUMAN, JR.
KRISTEN L. McMICHAEL
Attorneys for Defendant
MEMC ELECTRONIC MATERIALS, INC.

PURSUANT TO STIPULATION IT IS SO ORDERED.

DATED: 7/24/06

THE HONORABLE JUDITH A. COHEN
UNITED STATES DISTRICT JUDGE
U.S. Magistrate Judge